

AMENDED IN ASSEMBLY MAY 25, 1999
AMENDED IN ASSEMBLY APRIL 22, 1999
AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 749

**Introduced by Assembly ~~Member Wesson~~ Members Wesson
and Thompson**

February 24, 1999

An act to amend Sections 25354, 25612.5, 25658, 25658.5, 25660.5, 25661, and 25662 of the Business and Professions Code, and to amend Section 11474 of the Health and Safety Code, relating to alcoholic beverage control.

LEGISLATIVE COUNSEL'S DIGEST

AB 749, as amended, Wesson. Alcoholic beverage control: minors: penalties: controlled substances: destruction.

(1) The Alcoholic Beverage Control Act makes it a misdemeanor for any person under the age of 21 years to purchase any alcoholic beverage or consume any alcoholic beverage in any on-sale premises. Existing law provides that any person who violates that provision shall be punished by a fine of \$250, or not less than 24 hours or more than 32 hours of community service, or a combination thereof as determined by the court.

This bill would provide that a 2nd or subsequent violation would be punishable by a fine of not more than \$500 or

community service, as specified, or a combination of fine and community service as determined by the court.

(2) The Alcoholic Beverage Act provides that any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction. The act further provides, with respect to this infraction, that a first violation is punishable by a fine of not more than \$100 and for subsequent violations, a fine of \$250 or community service.

This bill would increase the penalty for a first violation by requiring as an alternative or in combination with the fine between 24 and 32 hours of community service, as determined by the court. This bill would also revise the community service alternative for subsequent violations.

(3) The Alcoholic Beverage Control Act provides that any person who sells, gives, or furnishes to any person under the age of 21 years any false or fraudulent written, printed, or photostatic evidence of the majority and identity of any person is guilty of a misdemeanor.

This bill would provide that a violation of this provision is punishable by a fine of \$1,000.

(4) The Alcoholic Beverage Control Act provides that any person under the age of 21 years who presents to a licensee any false identification for the purpose of ordering or purchasing or attempting to order or purchase alcoholic beverages is guilty of a misdemeanor, and subject to a fine of at least \$250, or specified community service, or both.

This bill would provide that a 2nd or subsequent violation would be punishable by a fine of not more than \$500 or community service, as specified, or a combination of fine and community service, as the court deems just.

(5) The Alcoholic Beverage Control Act makes it a misdemeanor for a person under the age of 21 years to have in his or her possession any alcoholic beverage on any street or highway or in any public place or place open to the public.

This bill would make a first violation of that provision punishable by a fine of at least \$250 ~~and or not less than~~ *between 24 and 32* hours of community service. The bill would make a 2nd or subsequent violation a misdemeanor punishable by a fine of ~~at least~~ *not more than* \$500, 36 to 48

hours of community service, and would provide that any grant of probation shall include the fine and not less than 50 hours of community service.

(6) Existing law provides that alcoholic beverages, when seized for forfeiture as specified, may be disposed of by the Department of Alcoholic Beverage Control, as specified.

This bill would provide that controlled substances, instruments, or paraphernalia seized by the department may only be disposed of pursuant to a court order for destruction.

(7) Existing law provides that a court order for the destruction of controlled substances, instruments, or paraphernalia, as specified, may be carried out by a police or sheriff's department, the Department of Justice, or the Department of the California Highway Patrol.

This bill would provide that, in addition, a court order for the destruction of controlled substances, instruments, or paraphernalia, as specified, may be carried out by the Department of Alcoholic Beverage Control.

(8) This bill would impose a state-mandated local program by changing the penalties for these crimes.

(9) Existing law establishes certain general operating standards that are applicable, as provided, to the licensed premises of certain retailers of alcoholic beverages, the violation of which is punishable as a misdemeanor.

This bill would impose a state-mandated local program by requiring these retail licensees who sell or rent video recordings to arrange them in a specified manner, a violation of which would be an infraction.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25354 of the Business and
2 Professions Code is amended to read:

3 25354. Alcoholic beverages manufactured or
4 produced in this state by any person other than a licensed
5 manufacturer or winegrower, when seized for forfeiture
6 under this division, may be disposed of by the
7 department, its officers, or employees by summary
8 destruction. Controlled substances, instruments, or
9 paraphernalia seized by the department may only be
10 disposed of pursuant to a court order for destruction.

11 SEC. 2. Section 25612.5 of the Business and
12 Professions Code is amended to read:

13 25612.5. (a) This section shall apply to licensees other
14 than a retail on-sale licensee or on-sale beer and wine
15 licensee who is licensed and operates as a bona fide public
16 eating place, as defined in Section 23038, 23038.1, or
17 23038.2, or as a hotel, motel, or similar lodging
18 establishment, as defined in subdivision (b) of Section
19 25503.16; a winegrowers license; a licensed beer
20 manufacturer, as defined in Section 23357; a retail
21 licensee who concurrently holds an off-sale retail beer
22 and wine license and a beer manufacturer's license for
23 those same or contiguous premises; and a retail on-sale
24 licensee or on-sale beer and wine licensee who is licensed
25 and operates as a bona fide public eating place, as defined
26 in Section 23038, 23038.1, or 23038.2, or as a hotel, motel,
27 or similar lodging establishment, as defined in subdivision
28 (b) of Section 25503.16, a licensed beer manufacturer, as
29 defined in Section 23357, or a winegrowers license, who
30 sells off-sale beer and wine under the on-sale license on
31 those same or contiguous premises.

32 (b) The Legislature finds and declares that it is in the
33 interest of the public health, safety, and welfare to adopt
34 operating standards as set forth in this section for
35 specified retail premises licensed by the department. The
36 standards set forth in this section are state standards that
37 do not preclude the adoption and implementation of

1 more stringent local regulations that are otherwise
2 authorized by law.

3 (c) Other than as provided in subdivision (a), each
4 retail licensee shall comply with all of the following:

5 (1) A prominent, permanent sign or signs stating “NO
6 LOITERING IS ALLOWED ON OR IN FRONT OF
7 THESE PREMISES” shall be posted in a place that is
8 clearly visible to patrons of the licensee. The size, format,
9 form, placement, and languages of the sign or signs shall
10 be determined by the department. This paragraph shall
11 apply to a licensee only upon written notice to the
12 licensee from the department. The department shall
13 issue this written notice only upon a request, from the
14 local law enforcement agency in whose jurisdiction the
15 premises are located, that is supported by substantial
16 evidence that there is loitering adjacent to the premises.

17 (2) A prominent, permanent sign or signs stating “NO
18 OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE
19 ALLOWED ON THESE PREMISES” shall be posted in
20 a place that is clearly visible to patrons of the licensee. The
21 size, format, form, placement, and languages of the sign
22 or signs shall be determined by the department. This
23 paragraph shall apply to a licensee only upon written
24 notice to the licensee from the department. The
25 department shall issue this written notice only upon a
26 request, from the local law enforcement agency in whose
27 jurisdiction the premises are located, that is supported by
28 substantial evidence that there is drinking in public
29 adjacent to the premises.

30 (3) No alcoholic beverages shall be consumed on the
31 premises of an off-sale retail establishment, and no
32 alcoholic beverages shall be consumed outside the edifice
33 of an on-sale retail establishment.

34 (4) The exterior of the premises, including adjacent
35 public sidewalks and all parking lots under the control of
36 the licensee, shall be illuminated during all hours of
37 darkness during which the premises are open for business
38 in a manner so that persons standing in those areas at
39 night are identifiable by law enforcement personnel.
40 However, the required illumination shall be placed so as

1 to minimize interference with the quiet enjoyment of
2 nearby residents of their property.

3 (5) Litter shall be removed daily from the premises,
4 including adjacent public sidewalks and all parking lots
5 under the control of the licensee. These areas shall be
6 swept or cleaned, either mechanically or manually, on a
7 weekly basis to control debris.

8 (6) Graffiti shall be removed from the premises and all
9 parking lots under the control of the licensee within 120
10 hours of application.

11 (7) No more than 33 percent of the square footage of
12 the windows and clear doors of an off-sale premises shall
13 bear advertising or signs of any sort, and all advertising
14 and signage shall be placed and maintained in a manner
15 that ensures that law enforcement personnel have a clear
16 and unobstructed view of the interior of the premises,
17 including the area in which the cash registers are
18 maintained, from the exterior public sidewalk or
19 entrance to the premises. However, this latter
20 requirement shall not apply to premises where there are
21 no windows, or where existing windows are located at a
22 height that precludes a view of the interior of the
23 premises to a person standing outside the premises.

24 (8) Upon request of the local law enforcement agency
25 in whose jurisdiction the licensed premises are located or
26 at the discretion of the department, each public
27 telephone located on off-sale premises (or located in an
28 adjacent area under the control of the off-sale licensee)
29 shall be equipped with devices or mechanisms that
30 prevent persons from calling into that public telephone.

31 (9) Every licensed retailer who sells or rents video
32 recordings of harmful matter, as defined by Section 313
33 of the Penal Code, shall create an area within his or her
34 business establishment for the placement of video
35 recordings of harmful matter and for any material that
36 advertises the sale or rental of these video recordings.
37 This area shall be labeled "adults only." The licensed
38 retailer shall make reasonable efforts to arrange the video
39 recordings in this area in such a way that minors may not
40 readily access the video recordings or view the video box

1 covers. The failure to create and label the “adults only”
2 area is an infraction punishable by a fine of not more than
3 one hundred dollars (\$100). The failure to place a video
4 recording or advertisement, regardless of its content, in
5 this area shall not constitute an infraction.

6 (10) A copy of the applicable operating standards shall
7 be available during normal business hours for viewing by
8 the general public.

9 SEC. 3. Section 25658 of the Business and Professions
10 Code is amended to read:

11 25658. (a) Except as otherwise provided in
12 subdivision (c), every person who sells, furnishes, gives,
13 or causes to be sold, furnished, or given away, any
14 alcoholic beverage to any person under the age of 21 years
15 is guilty of a misdemeanor.

16 (b) Any person under the age of 21 years who
17 purchases any alcoholic beverage, or any person under
18 the age of 21 years who consumes any alcoholic beverage
19 in any on-sale premises, is guilty of a misdemeanor.

20 (c) Any person who violates subdivision (a) by
21 purchasing an alcoholic beverage for a person under the
22 age of 21 years and the person under the age of 21 years
23 thereafter consumes the alcohol and thereby proximately
24 causes great bodily injury or death to himself, herself, or
25 any other person, is guilty of a misdemeanor.

26 (d) Any on-sale licensee who knowingly permits a
27 person under the age of 21 years to consume any alcoholic
28 beverage in the on-sale premises, whether or not the
29 licensee has knowledge that the person is under the age
30 of 21 years, is guilty of a misdemeanor.

31 (e) (1) Except as otherwise provided in paragraph
32 (2) or (3), any person who violates this section shall be
33 punished by a fine of two hundred fifty dollars (\$250), no
34 part of which shall be suspended, or the person shall be
35 required to perform not less than 24 hours or more than
36 32 hours of community service during hours when the
37 person is not employed and is not attending school, or a
38 combination of fine and community service as
39 determined by the court. A second or subsequent
40 violation of subdivision (b) shall be punished by a fine of

1 not more than five hundred dollars (\$500), or the person
2 shall be required to perform not less than 36 hours or
3 more than 48 hours of community service during hours
4 when the person is not employed and is not attending
5 school, or a combination of fine and community service
6 as determined by the court.

7 (2) Any person who violates subdivision (a) by
8 furnishing an alcoholic beverage, or causing an alcoholic
9 beverage to be furnished, to a minor shall be punished by
10 a fine of one thousand dollars (\$1,000), no part of which
11 shall be suspended, and the person shall be required to
12 perform not less than 24 hours of community service
13 during hours when the person is not employed and is not
14 attending school.

15 (3) Any person who violates subdivision (c) shall be
16 punished by imprisonment in a county jail for a minimum
17 term of six months not to exceed one year, by a fine not
18 exceeding one thousand dollars (\$1,000), or by both
19 imprisonment and fine.

20 (f) Persons under the age of 21 years may be used by
21 peace officers in the enforcement of this section to
22 apprehend licensees, or employees or agents of licensees,
23 who sell alcoholic beverages to minors. Notwithstanding
24 subdivision (b), any person under the age of 21 years who
25 purchases or attempts to purchase any alcoholic beverage
26 while under the direction of a peace officer is immune
27 from prosecution for that purchase or attempt to
28 purchase an alcoholic beverage. Guidelines with respect
29 to the use of persons under the age of 21 years as decoys
30 shall be adopted and published by the department in
31 accordance with the rulemaking portion of the
32 Administrative Procedure Act (Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3
34 of Title 2 of the Government Code). Law
35 enforcement-initiated minor decoy programs in
36 operation prior to the effective date of regulatory
37 guidelines adopted by the department shall be
38 authorized as long as the minor decoy displays to the
39 seller of alcoholic beverages the appearance of a person
40 under the age of 21 years. This subdivision shall not be

1 construed to prevent the department from taking
2 disciplinary action against a licensee who sells alcoholic
3 beverages to a minor decoy prior to the department's
4 final adoption of regulatory guidelines. After the
5 completion of every minor decoy program performed
6 under this subdivision, the law enforcement agency using
7 the decoy shall notify licensees of the results of the
8 program.

9 SEC. 4. Section 25658.5 of the Business and
10 Professions Code is amended to read:

11 25658.5. Any person under the age of 21 years who
12 attempts to purchase any alcoholic beverage from a
13 licensee, or the licensee's agent or employee, is guilty of
14 an infraction and shall be punished by a fine of not more
15 than one hundred dollars (\$100), or the person shall be
16 required to perform not less than 24 hours or more than
17 32 hours of community service during hours when the
18 person is not employed or is not attending school, or a
19 combination of fine and community service as
20 determined by the court. A second or subsequent
21 violation of this section shall be punished by a fine of not
22 more than two hundred fifty dollars (\$250), or the person
23 shall be required to perform not less than 36 hours or
24 more than 48 hours of community service during hours
25 when the person is not employed or is not attending
26 school, or a combination of fine and community service,
27 as the court deems just.

28 SEC. 5. Section 25660.5 of the Business and
29 Professions Code is amended to read:

30 25660.5. Any person who sells, gives, or furnishes to
31 any person under the age of 21 years any false or
32 fraudulent written, printed, or photostatic evidence of
33 the majority and identity of that person or who sells, gives
34 or furnishes to any person under the age of 21 years
35 evidence of majority and identification of any other
36 person is guilty of a misdemeanor and shall be punished
37 by a fine of one thousand dollars (\$1,000) no part of which
38 shall be suspended.

39 SEC. 6. Section 25661 of the Business and Professions
40 Code is amended to read:

1 25661. Any person under the age of 21 years who
2 presents or offers to any licensee, his or her agent or
3 employee, any written, printed, or photostatic evidence
4 of age and identity which is false, fraudulent or not
5 actually his or her own for the purpose of ordering,
6 purchasing, attempting to purchase or otherwise
7 procuring or attempting to procure, the serving of any
8 alcoholic beverage, or who has in his or her possession any
9 false or fraudulent written, printed, or photostatic
10 evidence of age and identity, is guilty of a misdemeanor
11 and shall be punished by a fine of at least two hundred
12 fifty dollars (\$250), no part of which shall be suspended;
13 or the person shall be required to perform not less than
14 24 hours nor more than 32 hours of community service
15 during hours when the person is not employed and is not
16 attending school, or a combination of fine and community
17 service as determined by the court. A second or
18 subsequent violation of this section shall be punished by
19 a fine of not more than five hundred dollars (\$500), or the
20 person shall be required to perform not less than 36 hours
21 or more than 48 hours of community service during hours
22 when the person is not employed or is attending school,
23 or a combination of fine and community service, as the
24 court deems just.

25 SEC. 7. Section 25662 of the Business and Professions
26 Code is amended to read:

27 25662. (a) Any person under the age of 21 years who
28 has any alcoholic beverage in his or her possession on any
29 street or highway or in any public place or in any place
30 open to the public is guilty of a misdemeanor and shall be
31 punished by a fine of two hundred fifty dollars (\$250) or
32 the person shall be required to perform not less than 24
33 *hours or more than 32* hours of community service during
34 hours when the person is not employed or is not attending
35 school. A second or subsequent violation shall be
36 punishable as a misdemeanor and the person shall be
37 ~~fin~~*ed at least not more than* five hundred dollars (\$500),
38 or required to perform not less than 36 hours or more than
39 48 hours of community service during hours when the
40 person is not employed or is not attending school, or a

1 combination of fine and community service as the court
2 deems just. This section does not apply to possession by a
3 person under the age of 21 years making a delivery of an
4 alcoholic beverage in pursuance of the order of his or her
5 parent, responsible adult relative, or any other adult
6 designated by the parent or legal guardian, or in
7 pursuance of his or her employment. That person shall
8 have a complete defense if he or she was following, in a
9 timely manner, the reasonable instructions of his or her
10 parent, legal guardian, responsible adult relative, or adult
11 designee relating to disposition of the alcoholic beverage.

12 (b) Unless otherwise provided by law, where a peace
13 officer has lawfully entered the premises, the peace
14 officer may seize any alcoholic beverage in plain view
15 that is in the possession of, or provided to, a person under
16 the age of 21 years at social gatherings, when those
17 gatherings are open to the public, 10 or more persons
18 under the age of 21 years are participating, persons under
19 the age of 21 years are consuming alcoholic beverages,
20 and there is no supervision of the social gathering by a
21 parent or guardian of one or more of the participants.

22 Where a peace officer has seized alcoholic beverages
23 pursuant to this subdivision, the officer may destroy any
24 alcoholic beverage contained in an opened container and
25 in the possession of, or provided to, a person under the age
26 of 21 years, and, with respect to alcoholic beverages in
27 unopened containers, the officer shall impound those
28 beverages for a period not to exceed seven working days
29 pending a request for the release of those beverages by
30 a person 21 years of age or older who is the lawful owner
31 or resident of the property upon which the alcoholic
32 beverages were seized. If no one requests release of the
33 seized alcoholic beverages within that period, those
34 beverages may be destroyed.

35 SEC. 8. Section 11474 of the Health and Safety Code
36 is amended to read:

37 11474. A court order for the destruction of controlled
38 substances, instruments, or paraphernalia pursuant to the
39 provisions of Section 11473 or 11473.5 may be carried out
40 by a police or sheriff's department, the Department of

1 Justice, the Department of the California Highway
2 Patrol, or the Department of Alcoholic Beverage Control.
3 The court order shall specify the agency responsible for
4 the destruction. Controlled substances, instruments, or
5 paraphernalia not in the possession of the designated
6 agency at the time the order of the court is issued shall be
7 delivered to the designated agency for destruction in
8 compliance with the order.

9 SEC. 9. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

